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COMCAST INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DANIEL KEATING-TRAYNOR on
behalf of himself and all others similarly
situated,

Plaintiffs,

vs.

AC SQUARE INC.; COMCAST INC.;
AFSHIN GHANEH; ANDREW
BAHMANYAR; and DOES 1-60
inclusive,

Defendants.

Case No. CV-08-3035-MHP

**[PROPOSED] ORDER GRANTING
DEFENDANT COMCAST INC.'S MOTION
TO DISMISS PLAINTIFF'S COMPLAINT**

Date: September 15, 2008
Time: 2:00 p.m.
Courtroom: 15
Judge: Honorable Marilyn H. Patel

WHEREFORE, on September 15, 2008, the Motion to Dismiss Plaintiff Daniel Keating-
Traynor's ("Plaintiff") Complaint filed by Defendant Comcast Inc. ("Defendant") came on for
regularly scheduled hearing in Courtroom Fifteen, the Honorable Judge Marilyn H. Patel
presiding. Daryl Landy of Morgan, Lewis & Bockius LLP appeared for Defendant and Daniel

Berko appeared for Plaintiff. Upon consideration of the pleadings, papers, and arguments of counsel, and with good cause shown, it is hereby **ORDERED AND ADJUDGED THAT:**

Defendant's Motion is **GRANTED**.

Plaintiff's First Claim is dismissed, without leave to amend, because Plaintiff did not, and cannot, state a claim showing the formation and operation of a conspiracy to which Comcast was a party. Absent any duty owed by Comcast, no conspiracy claim can be made. *Litton v. Saudi Arabia Ltd.*, 7 Cal. 4th 503, 520 (1994).

Plaintiff's Second Claim for Violation of the Fair Labor Standards Act, 29 U.S.C. section 201, *et seq.* ("FLSA") is dismissed, without leave to amend, because it is time-barred by the FLSA's maximum three-year statute of limitations. 29 U.S.C. § 255.

Plaintiff's Third Claim is also dismissed, without leave to amend, because it is time-barred by the maximum three-year statute of limitations. *Harrell v. 20th Century Ins. Co.*, 934 F.2d 203, 208 (9th Cir. 1991) (holding applicable statute of limitations for a civil conspiracy claim is statute of limitations for underlying claim); *Risk v. Kingdom of Norway*, 707 F. Supp. 1159, 1170, n. 13 (N.D. Cal. 1989) (same).

In addition, Plaintiff's Fourth Claim is dismissed, without leave to amend, because it is time-barred by the three-year statute of limitations for an action for payment of wages due under California Labor Code section 201. Cal. Code Civ. Proc. § 338(a); *Montecino v. Spherion Corp.*, 427 F. Supp. 2d 965, 967 (C.D. Cal. 2006); *Medrano v. D'Arrigo Bros. Co.*, 125 F. Supp. 2d 1163, 1170 (N.D. Cal. 2000).

Plaintiff's Fifth Claim is dismissed, without leave to amend, because it is time-barred by the applicable a one-year statute of limitations for penalties. Cal. Code Civ. Proc. §340(a).

Accordingly, Plaintiff's Complaint against Comcast is dismissed, in its entirety, without leave to amend.

IT IS SO ORDERED.

Dated: _____

By: _____
United States District Court Judge

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